

PIERCE BAINBRIDGE BECK PRICE & HECHT LLP

Brian J. Dunne (CA Bar No. 275689)

bdunne@piercebainbridge.com

Theodore J. Folkman (*Pro Hac Vice*)

tfolkman@piercebainbridge.com

Dwayne D. Sam (*Pro Hac Vice*)

dsam@piercebainbridge.com

355 South Grand Ave., 44th Floor

Los Angeles, California 90071

(213) 262-9333

Attorneys For Applicant

ZYXEL COMMUNICATIONS UK LIMITED

and ZYXEL COMMUNICATIONS A/S

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re APPLICATION OF ZYXEL
COMMUNICATIONS UK LIMITED and
ZYXEL COMMUNICATIONS A/S FOR AN
ORDER PURSUANT TO 28 U.S.C. § 1782
GRANTING LEAVE TO OBTAIN
DISCOVERY FROM BROADCOM INC.
and BROADCOM CORP. FOR USE IN
FOREIGN PROCEEDINGS

Civ. A. No. 19-mc-080175

**NOTICE OF NEW DEVELOPMENT IN
RELATED CASE**

On July 18, 2019, counsel for ZyXEL were informed by ZyXEL's lawyers in England that the Court of Appeal (Civil Division) had that day entered a judgment holding that the RAND declarations sought by the claimant, TQ Delta, LLC, had no real prospect of success. (Second Marf  Decl. ¶ 2 & Ex. 1). The result of this judgment is that the RAND trial referenced in the memorandum in support of ZyXEL's application will not go forward in September 2019. (Second Marf  Decl. ¶ 3). ZyXEL's English lawyers understand that TQ Delta may seek leave from the UK Supreme Court to appeal the Court of Appeal's decision. (Second Marf  Decl. ¶ 3).

NOTICE OF NEW DEVELOPMENT

1 Thus it is still unclear whether a RAND trial will ultimately take place in the English
 2 proceedings. (Marfé Decl. ¶ 4).

3 Because TQ Delta may appeal the Court of Appeal's decision, the information ZyXEL
 4 seeks in this application remains relevant, the English proceeding remains pending, and this
 5 application remains important to ZyXEL. See *In re Application of Khrapunov*, 2018 WL
 6 3239001, at *4 (N.D. Cal. 2018) (proceedings are still "pending" for purposes of 28 U.S.C. §
 7 1782 even when the applicant has lost its foreign case and has appealed). Moreover, the English
 8 action TQ Delta filed against ZyXEL in March 2019 and referenced in the memorandum ZyXEL
 9 submitted in support of its application is still pending (ECF 2 at 3), and the evidence ZyXEL
 10 seeks is for use in that action, too, if any appeal by TQ Delta succeeds. (Second Marfé Decl. ¶ 5).

11 For these reasons and the reasons set out in the memorandum in support of the
 12 application, ZyXEL respectfully requests that the Court grant its application.

13
 14
 15
 16 By its attorneys:

17
 18 /s/ Brian J. Dunne

19 Brian J. Dunne (CA Bar No. 275689)
 20 PIERCE BAINBRIDGE BECK PRICE &
 21 HECHT, LLP
 22 355 S. Grand Ave., 44th Floor
 23 Los Angeles, CA 90071
 24 (213) 246-2411
 25 bdunne@piercebainbridge.com

26 Theodore J. Folkman (*pro hac vice*)
 27 PIERCE BAINBRIDGE BECK PRICE &
 28 HECHT, LLP
 One Liberty Square
 Boston, MA 02109
 (617) 313-7401
 tfolkman@piercebainbridge.com

NOTICE OF NEW DEVELOPMENT

Dwayne D. Sam (*pro hac vice*)
PIERCE BAINBRIDGE BECK PRICE &
HECHT, LLP
601 Pennsylvania Ave., NW
South Tower, Suite 700
Washington, DC 20004
(202) 843-8342
dsam@piercebainbridge.com

NOTICE OF NEW DEVELOPMENT